

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 20179 OF 2022

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Narayan Behera Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. H. Mohapatra
A. Samantray and
S. Behera, Advocates.

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate
[O.P. Nos.1 to 3]

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing and judgment: 07.09.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the order dated 02.08.2022, as at Annexure-6, passed by the Sub-Collector-cum-Convenor Secretary, Swargadwar Seba Samity, Puri, directing him to vacate the Puja Shop on 14.08.2022 and deciding to give the said Puja Shop to ORMAS, without floating any tender to that effect, or to allow the

petitioner to continue as per Clause-10 of the Agreement.

2. Shorn off unnecessary details, the factual matrix of the case is that initially Puja Shop room at Swargadwar, Puri was under the control of the Puri Municipality. By letter no.1036 dated 10.02.2020, sealed quotations were invited by the Puri Municipality from interested shopkeepers/ vendors/ service providers/ suppliers in the prescribed proforma for supply of Puja Articles, Casuarinas Jhatis and photographs required for the purpose of cremation at Swargadwara. Pursuant thereto, quotations were submitted and the person, having lowest rate for supply of Puja Articles etc., was selected to operate the Puja shop at Swargadwara, Puri. Subsequently, the said Puja Shop at Swargadwara premises came under the control and management of Swargadwara Seba Samity, of which the Sub-Collector, Puri is the Convenor Secretary.

2.1 For the year 2021, after the Puja Shop came to the control of Swargadwara Seba Samity, the Sub-

Collector, Puri, being the Convenor Secretary of the Samity, floated tender to put Puja Shop into auction, in pursuance of which the petitioner and others participated in the tender process. The tender of said Puja Shop consisted of three items (1) Kokei, (2) Mukhagni and (3) Patha Sradha Samagri. The petitioner submitted his tender at the rate of Rs.250/- for Kokei, Rs.228/- for Mukhagni and Rs.204/- for Patha Sradha Samagri. The petitioner, being the lowest bidder, was selected and allotted with the said Puja Shop. Consequentially, an agreement was executed between the Sub-Collector, Puri-cum-Convenor Secretary, Swargadwara Seba Samity and the petitioner for the period from 15.05.2021 to 14.05.2022.

2.2 Before expiry of the agreement period on 14.05.2022, the petitioner submitted a representation on 21.03.2021 before the Swargadwara Seba Samity, Puri to extend the contract period for another period of three years, as he had been providing services satisfactorily. But the opposite parties, after expiry of the contract period, i.e., from 15.05.2021 to

14.05.2022, entered into an agreement with the petitioner for a period of only three months w.e.f 10.05.2022, vide letter no.104 dated 05.05.2022, as per the order/letter no.127/SSS dated 07.05.2021, for supply and sale of Puja Samagri at the existing prices. The said period of three months was expired on 09.08.2022. Since it is a continuous process to be followed at Swargadwara Puri, the opposite parties, vide order dated 02.08.2022 under Annexure-6, decided to give the said Puja Shop to ORMAS, a Govt. of Odisha Undertaking, with effect from 14.08.2022. Aggrieved by such order, the petitioner has approached this Court by filing the present writ petition.

3. Mr. H. Mohapatra, learned counsel appearing for the petitioner vehemently contended that the order impugned dated 02.08.2022 hading over the Puja Shop to ORMAS w.e.f. 14.08.2022 midnight, is illegal, arbitrary and contrary to the provisions of law. It is contended that since the order impugned has been passed as per the decision taken by the Collector-cum-Chairman-SSS, Puri, the same is without jurisdiction. It

is further contended that Clause-10.4 of the Swargadwar Seba Samity Standard Operating Procedure, provides that the Convenor-cum-Secretary, Swargadwar Seba Samity shall call for the tender annually or as and when required for services and commodities, such as Puja Shop, Cafeteria, and supply of cleaning materials and disposal of recyclable garbage like bamboos and any other material. Thereby, without inviting tender, the direction given to the petitioner to vacate the Puja Shop to give the said Puja Shop to ORMAS to operate the same, cannot sustain in the eye of law. It is further contended that the petitioner has offered more price than the ORMAS and, therefore, the petitioner may be allowed to continue to operate the Puja Shop, till a fresh tender is floated by the authority.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties contended that since the period of agreement from 15.05.2021 to 14.05.2022 had been over and thereafter it was extended for another period of three months w.e.f. 10.05.2022 and, as such, the said period has

already been expired with effect from 09.08.2022, after expiry of the said period, the petitioner has no *locus standi* to assail the action taken by the opposite party-authority. It is further contended that the Collector, being the Chairman of the Swargadwar Seba Samity, and as per 6th General Body meeting, took a decision to handover the Puja Shop to a Government Organization, namely, ORMAS, which was communicated to the petitioner vide order dated 02.08.2022 under Annexure-6. Therefore, no illegality or irregularity has been committed by the authority so as to warrant interference with the same by this Court at this stage. It is further contended that Clause-10.4 of the Swargadwar Seba Samity Standard Operating Procedure, provides that the Convenor-cum-Secretary, SSS shall call for the tender annually or as and when required for services and commodities such as Puja Shop, Cafeteria, and supply of cleaning materials and disposal of recyclable garbage like bamboos and any other material and, as such, adhering to the same, the authority has taken steps. It is thus contended that if

power has been vested with the Convenor-cum-Secretary Swargadwara Seba Samity to go either for tender annually or as and when required for service, in that case, the petitioner cannot compel that the opposite party-authority should without going for tender for allow the petitioner to operate the only another period of three years. It is further contended that it is a continuous process and, as such, since the period of tender has already been over, so far as it relates to the petitioner, he cannot have any justification to approach this Court by filing the present writ petition. More so, the claim made by the petitioner cannot sustain in the eye of law, for which the writ petition is liable to be dismissed.

5. This Court heard Mr. H. Mohapatra, learned counsel appearing for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties by virtual mode. Though learned counsel appearing for the petitioner sought time to file rejoinder affidavit, but taking into consideration the urgency in the matter and, as such, considering the

fact that the petitioner has no *locus standi* to continue after the period of tender is over and also enjoying an interim order dated 12.08.2022, this Court is not inclined to grant any further time to file rejoinder affidavit. As such, the matter is being heard and disposed of finally at the stage of admission.

6. As is evident from the factual matrix, as delineated above, admittedly, the opposite parties entered into an agreement with the petitioner on 10.05.2021 allowing him to operate the Puja Shop for supply and sale of Puja Samagri at Swargadwara Puri w.e.f. 15.05.2021 to 14.05.2022. Clause-10 of the said agreement reads as under:-

“10. The First party has the right to extend the contract period further depending upon satisfactory service of the second party or cancel the permission at any point of time and forfeit the security deposit without assigning any reason thereon.”

After the above tender period was over, the petitioner was granted extension and allowed to operate said Puja Shop for another period of three months w.e.f. 10.05.2022 and, as such, the said three months period

has on 09.08.2022. Therefore, to meet the immediate situation and in compliance of Clause-10.4 of the Swargadwar Seba Samity Standard Operating Procedure, opposite party-authority made arrangement, vide order dated 02.08.2022, permitting the State Government Undertaking, namely, ORMAS to have the possession of the Puja Shop and continue with the same. As such, after expiry of the period w.e.f. 09.08.2022, the petitioner has no *locus standi* to challenge the same. Furthermore, in the event the petitioner intends to challenge the same by way of public interest litigation, that by itself also cannot suffice the purpose, as private interest of the petitioner to continue in the said Puja Shop, as has been pleaded in the writ petition, is involved.

7. As per clause-10.4 of the Standard Operating Procedure, the opposite party-authority has only to go for tender annually or as and when required for service and commodities. But fact remains, pending invitation of the tender, if the competent authority made interim arrangement by allowing the ORMAS to continue to

operate the Puja Shop, the petitioner should not have made any grievance. As such, the petitioner has no vested right to continue with the Puja Shop. In the event the opposite parties would go for tender, it is open to the petitioner to participate in the tender process and if he succeeds in the same, he will be allowed to continue with the Puja Shop.

8. It is common knowledge that the word 'agreement' means coming together of parties in opinion or final determination the union of two or more minds in a thing done or to be done; a mutual assent to do a thing.

9. In **Samuel Williston, A Treatise on the Law of Contracts, 3rd Edition, 1957**, it has been held that "an agreement as the Courts have said, 'is nothing more than a manifestation of mutual assent' by two or more parties legally competent persons to one another. Agreement is in some respects a broader term than contract or even than bargain or promise. It covers executed sales, gifts and other transfers of property".

10. In **Felthouse v. Bindley**, (1862) 142 ER 1037, it has been held that an 'agreement' is an instrument between the parties who willfully agree to perform certain acts or refrain from doing something. The parties to the instrument should be agreed about the subject-matter at the same time and in the same sense. The two or more parties which are agreed must communicate with each other.

11. In **W.T. Lamp & Sons v. Govind Brick Co. Ltd.**, (1932) 1 KB 7, it has been held that an 'agreement' is a commercial document.

12. In **Tractoroexport Moscow v. Tarapore & Company**, AIR 1971 SC 1, the apex Court held that the word 'agreement' means a commercial contract and not an agreement to refer or an arbitral clause.

13. Therefore, the 'agreement' includes any arrangement or understanding or action in concert-(i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such

arrangement, understanding or action is intended to be enforceable by legal proceedings.

14. Taking into consideration the meaning attached to the word 'agreement', as mentioned above, it is made clear that the petitioner entered into an agreement with the opposite parties in writing with the terms and conditions set out therein. As per such terms and conditions, the duration of such agreement also specifically mentioned, i.e., from 15.05.2021 to 14.05.2022. Thereby, with expiry of such period, the agreement is no more subsisting. Although the said agreement was extended for another period of three months w.e.f 10.05.2022, vide letter no.104 dated 05.05.2022, as per the order/letter no.127/SSS dated 07.05.2021 for supply and sale of Puja Samagri at the existing prices, pursuant to the agreement, said period of three months has already expired on 09.08.2022. Therefore, after expiry of the period of the agreement, the petitioner has no right to continue and, as such, he cannot also claim to continue further, because his continuance is subject to satisfactory performance,

meaning thereby to the subjective satisfaction of the opposite parties. Thereby, the petitioner cannot claim that he has performed his duties satisfactorily and on that basis he should continue in terms of the agreement for another period of three years. Such claim of the petitioner cannot have any justification, as the period of agreement has already over.

15. Furthermore, it is also brought to the notice of the Court that there is serious allegation against the petitioner, which has been placed on record, with regard to supply of Puja materials. Complaint was also received from different quarters against the petitioner and, as such, there was news publication in the newspaper against the petitioner. In any case, this Court is not inclined to enter into the arena of such controversy. If any such thing has been done by the petitioner, it is open to the authority to proceed against him in terms of the contract itself and, as such, this Court is refrained from making any observation with regard to the same at this point of time.

16. In the above view of the matter, this Court is of the considered opinion that since the period of the agreement, including the extended period, has already over, the petitioner has no right to continue with the Puja Shop in question. Thus, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order as to costs.

17. In view of dismissal of the writ petition, the interim order passed earlier stands vacated.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 7th September, 2022, Ashok/GDS

